

REMARKS

This reply is in response to the Office Action dated September 17, 2009. Claims 1-10, 12-20, 23-47, 49-65, 143-146, 148-176, and 178-198 are pending in the application and stand rejected. Entry of the foregoing amendment and reconsideration of the claims is respectfully requested.

Status of the Claims

Claims 1-10, 12-20, 23-47, 49-65, 143-146, 148-176, and 178-198 are pending in the present application. As reflected in the listing of claims above, claims 1-3, 5-7, 10, 12-15, 28, 39-40, 42-44, 47, 49-52, 57, 143, 145-146, 148-151, 165-166, 173, 175-176, 178-182, and 193-194 have been amended. These claims are amended to change the adjectives modifying the first and second polymers in order to bring the claims into alignment with the language used in the specification. Support for these amendments is found throughout the specification as filed. All claim amendments herein have been made solely to clarify the nature of the articles claimed, and are not made in an effort to overcome the cited prior art, nor are they intended to limit the scope of the claims and their equivalents in any way. No new matter has been added.

Claim Rejections – 35 USC §112

Claims 1-10, 12-20, 23-47, 49-65, 143-146, 148-176 and 178-198 stand rejected under 35 U.S.C. §112, first and second paragraphs. The Office Action alleges that the descriptors “lower” and “higher” with respect to the crystallinity of the polymers claimed are not supported by the specification of the application and are indefinite.

Applicant respectfully traverses the rejection. While Applicant disagrees with the assertions made in the Office Action, the claims have been amended to replace “lower” with “low” and “higher” with “high” throughout, in an effort to reduce outstanding issues in the case and make the language of the claims parallel with the specification. Support for these amendments is found throughout the specification.

Applicant believes that the aforementioned claim amendments render the rejections under §112 moot. Applicant also believes, however, that the adjectives used to modify the claimed

polymers, whether “lower” or “low” or “higher” or “high”, are irrelevant to the definiteness of the claims with respect to the crystallinity of the claimed polymers because the crystallinity of each polymer is specifically and numerically set forth elsewhere in each of the independent claims.

For the foregoing reasons, Applicant respectfully requests withdrawal of the rejection and allowance of the claims.

Claim Rejections – 35 USC § 102 and § 103

Claims 1-10, 12-20, 23-47, 49-65, 143-146, 148-176 and 178-198 stand rejected under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious in view of Tsurutani et al. (U.S. Patent No. 5,472,792; hereafter “Tsurutani”). Applicant respectfully traverses the rejection because Tsurutani does not teach, disclose, or suggest all elements of the pending claims.

The pending claims, as amended, are directed to articles comprising a first layer, which comprises a low crystallinity polymer, and a second layer, which comprises a high crystallinity polymer. As required in every claim, the low crystallinity polymer has a melting temperature between 20 °C and 110 °C and a polypropylene crystallinity of from 3% to 40%, as determined by DSC. Tsurutani does not teach, disclose, or suggest a layer comprising a low crystallinity polymer wherein the melting temperature of that polymer is between 20 °C and 110 °C and the propylene crystallinity of the polymer is from 3% to 40%.

The Office Action alleges that the amorphous propylene copolymer described by Tsurutani is synonymous with the low crystallinity polymer claimed herein. While Applicant respectfully disagrees that the two are comparable, for the purposes of this response Applicant accepts that the amorphous copolymer of Tsurutani is the polymer described in the reference which most closely corresponds to the claimed low crystallinity polymer. Although the Office Action does not provide specific reference to a portion of the Tsurutani disclosure which teaches the melting point of the amorphous copolymer, the Office Action appears to assert that the amorphous copolymers of Tsurutani necessarily have the same thermal, structural, and

mechanical properties as the claimed low crystallinity polymers because the amorphous copolymers may have a similar comonomer content. Applicant respectfully disagrees.

It is well known to those of skill in the art that the melting point of a polymer depends on much more than its comonomer type and content. Rather, the melting point of a polymer is affected by a variety of factors, including the catalyst used to prepare the polymer, the reaction conditions, the stereoregularity of the polymer, and the rate of crystallization of the polymer as it is cooled among other factors. There is no indication in Tsurutani that the amorphous polymers described therein are prepared under conditions that would produce polymers having the claimed melting range, nor can such melting behavior be assumed from the limited details that are disclosed. Therefore, Applicant respectfully submits that Tsurutani does not teach, disclose, or suggest a low crystallinity polymer having a melting temperature of from 20 °C to 110 °C, as required in every claim herein.

The Office Action further alleges that the crystallinity of the amorphous polymers of Tsurutani is inherently within the polypropylene crystallinity range of the low crystallinity polymer claimed herein (3% to 40% as measured by DSC) because the n-heptane solubility of the amorphous polymers is greater than 40%, and a higher n-heptane value indicates a lower crystallinity. (Applicant notes that the n-heptane range disclosed by Tsurutani is actually greater than 30%, as given in col. 3, lines 15-22, of Tsurutani.) The Office Action offers no correlation between n-heptane values and DSC crystallinity measurements (which is the method claimed and used in the present application), nor does it offer any documentation or other support other than an “understanding” that the n-heptane values disclosed by Tsurutani are equivalent to the specific polypropylene crystallinity range claimed. Such reliance on purported common knowledge without further support is improper. See MPEP §2144.03(A). Applicant respectfully maintains that Tsurutani does not teach, disclose, or suggest a low crystallinity polymer having a propylene crystallinity between 3% and 40% as determined by DSC, as required in every claim herein.

For at least the foregoing reasons, the Office Action has failed to show anticipation of the claims or present a *prima facie* showing of obviousness because Tsurutani does not teach,

disclose, or suggest all elements of the pending claims. Accordingly, withdrawal of the rejection and allowance of the claims is respectfully requested.

CONCLUSION

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated, since this should expedite the prosecution of the application for all concerned.

If necessary to affect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to affect a timely response. Please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1712 (Docket #: 2003B002/2).

Respectfully submitted,

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Date

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